BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

SHEILA EDMOND	)	
Claimant	)	
VS.	)	
	)	Docket No. 233,720
RAYTHEON AIRCRAFT COMPANY	)	
Respondent,	)	
Self-Insured	)	

ORDER

Claimant appealed the June 24, 2002 Review and Modification of an Award entered by Administrative Law Judge Nelsonna Potts Barnes. The Board heard oral argument on January 17, 2003, in Wichita, Kansas.

APPEARANCES

Roger A. Riedmiller of Wichita, Kansas, appeared for claimant. David S. Wooding of Wichita, Kansas, appeared for respondent.

RECORD AND STIPULATIONS

The record considered by the Board and the parties' stipulations are listed in the Review and Modification of an Award. The Board notes, however, that the correct date for the review and modification hearing was October 2, 2000.

ISSUES

This claim was filed for bilateral upper extremity injuries that allegedly occurred from either April 6 or May 26, 1998, and each working day afterwards. The parties entered into a Stipulated Award that was signed by the Judge on July 14, 1999, in which the parties agreed claimant was entitled to receive permanent partial general disability benefits for a 9.6 percent whole person functional impairment.

On November 4, 1999, claimant initiated this review and modification proceeding requesting that the permanent partial general disability be increased to a work disability. On approximately January 31, 2000, respondent terminated claimant.

In the June 24, 2002 Review and Modification of an Award, Judge Barnes denied claimant's request to modify the Stipulated Award. In denying claimant's request for a work disability, the Judge found claimant was terminated from respondent's employment due to a throat problem rather than due to her work-related bilateral upper extremity injuries.

Claimant contends the Judge erred. Claimant asks the Board to find that she has sustained a 39 percent task loss and a 100 percent wage loss, for a 69.5 percent work disability. Claimant argues that other factors, including her work-related injuries, contributed to her termination.

Conversely, respondent argues the decision denying a work disability should be affirmed. Respondent argues the Stipulated Award should not be modified as claimant's termination was not related to her work-related injuries.

The only issues before the Board on this appeal are:

1. Is a worker entitled to a work disability when that worker loses accommodated employment due to the combined effects of a personal condition and a work-related injury?

2. If so, what is claimant's new permanent partial general disability?

FINDINGS OF FACT

After reviewing the entire record, the Board finds, as follows:

Claimant worked for respondent as a radio and electrical assembler. As a result of that work claimant developed repetitive use injuries to both hands and wrists. By a Stipulated Award signed July 14, 1999, the parties agreed claimant's date of accident for the bilateral wrist injuries was May 26, 1998, and that claimant should receive permanent partial general disability benefits for a 9.6 percent whole person functional impairment.

Respondent accommodated claimant's wrist injuries by providing her an automatic crimper and by assigning her somewhat different duties. Claimant continued to work in the same department but her modified duties required her to do more soldering than she had done in the past. Claimant performed her accommodated job duties through February 5, 1999, when she left work for throat surgery to remove polyps from her larynx.

But this was not the first time that claimant had experienced throat problems. Claimant has experienced throat problems and polyps since childhood. Over the years, claimant has undergone numerous surgeries to remove the polyps as they would recur. Claimant does not contend that her throat problems were either caused or aggravated by her work or that her throat condition is compensable under the Workers Compensation Act.

After leaving work on February 5, 1999, claimant underwent throat surgery three days later. According to Dr. Yoram B. Leitner, claimant's throat specialist, in early February 1999 he wrote respondent suggesting that claimant work in an area of relatively clean air. Despite treating claimant's larynx problems since 1993, February 1999 was the first occasion that the doctor made recommendations regarding claimant's work environment. On February 23, 1999, the doctor recommended that claimant avoid dust, smoke, excessive dryness and other irritants. When requested to clarify those recommendations, in late March 1999 the doctor responded by indicating that claimant should be six feet away from solder smoke.

Respondent attempted to accommodate claimant's throat problems by providing a respirator and a fan that removed smoke from the air. But claimant experienced what she described as panic attacks when she wore the mask, and the fan did not achieve the desired results. Consequently, claimant was placed on medical leave due to her throat problems.

While on medical leave, claimant drew six months of unemployment benefits and looked for other work. Additionally, in July 1999 claimant underwent another throat surgery. After that surgery, Dr. Leitner restricted claimant from working within six feet of dust and smoke.

Claimant's medical leave expired on January 31, 2000. And according to company policy and union contract, a worker would be automatically terminated after missing work for 12 months. Consequently, claimant tried returning to work for respondent before her medical leave expired. Respondent, however, terminated claimant as she had been off work for 12 months and it had no job openings that would accommodate both her bilateral wrist injuries and her throat condition.

The Board finds that the greater weight of the evidence establishes that claimant could not return to her job as a radio and electrical assembler as she would be within six feet of the source of solder smoke. The Board also finds the medical restrictions for claimant's bilateral upper extremities precluded her from working certain jobs and the medical restrictions for her throat condition prevented her from working other jobs, including her former job as a radio and electrical assembler. Moreover, the Board concludes that both respondent and claimant's labor union made a good faith effort to find an appropriate job for claimant but there were no job openings. Accordingly, the Board concludes respondent did not act in bad faith in terminating claimant.

On the other hand, the Board finds that claimant made a good faith effort to retain her employment with respondent and a good faith effort to find other employment after she was terminated by respondent. Moreover, the Board concludes that claimant's bilateral upper extremity injuries contributed to her termination. When representatives from claimant's labor union were attempting to find another position for claimant within

respondent's plant, the union did not consider certain positions such as sheet metal worker or working with landing gears or working with actuators as those jobs might have caused problems with claimant's hands.

When claimant last testified, her job search efforts had been unsuccessful and she remained unemployed. The Board concludes that claimant's bilateral wrist injuries have contributed to her present unemployment. The Board is persuaded by Dr. Pedro A. Murati's testimony that claimant should observe permanent restrictions due to her bilateral wrist injuries. Dr. Murati, who examined claimant in April 1999, determined that claimant should observe restrictions against ladder climbing; crawling; heavy grasping; repetitive grasping/grabbing; repetitively using hand controls; lifting more than 20 pounds occasionally, more than 10 pounds frequently, and more than five pounds constantly; and using vibratory tools, pliers, hammers, hooks and knives. Consequently, claimant should observe permanent work restrictions to protect her wrists from additional injury and, therefore, she must be somewhat selective in the work that she obtains.

As indicated above, the parties entered into a Stipulated Award in which they compromised and agreed that claimant had sustained a 9.6 percent whole person permanent functional impairment as a result of the bilateral wrist injuries that she sustained while working for respondent.

When considering the entire record, the Board concludes that due to her bilateral upper extremity injuries claimant has lost the ability to perform some of the work tasks that she performed before she developed her bilateral wrist injuries. Moreover, the Board finds that claimant's task loss falls somewhere between the 41 percent task loss determined by Dr. Murati, who found that claimant had lost the ability to perform 28 of 68 former work tasks, and the zero percent task loss indicated by Dr. George L. Lucas' testimony. Accordingly, the Board averages those percentages and concludes that due to her bilateral wrist injuries claimant has lost the ability to perform approximately 21 percent of the work tasks that she performed in the 15-year period before she developed the repetitive use injuries to her wrists.

The Board is mindful that Dr. Lucas, who treated claimant's wrists beginning in August 1998, testified that claimant did not have any permanent impairment and needed no permanent work restrictions. But in July 2000, when the doctor saw claimant for the last time and when claimant was still complaining of pain shooting up into her arms and pain in her wrists, the doctor recommended anti-inflammatories and hand exercises. According to Dr. Lucas, claimant has not sustained any permanent injuries despite the fact that claimant had experienced chronic bilateral upper extremity pain for more than two years when he saw her last. Likewise, according to Dr. Lucas, claimant should not be restricted from the twisting and gripping activities that the doctor believed had caused claimant's injuries in the first instance. The Board is not persuaded and, therefore, cannot adopt Dr. Lucas' opinions in their entirety.

CONCLUSIONS OF LAW

The June 24, 2002 Review and Modification of an Award should be modified to increase claimant's permanent partial general disability commencing with the date that respondent terminated her.

When an injury does not fit within the schedules of K.S.A. 1997 Supp. 44-510d, permanent partial general disability is determined by the formula set forth in K.S.A. 1997 Supp. 44-510e, which provides, in part:

> Permanent partial general disability exists when the employee is disabled in a manner which is partial in character and permanent in quality and which is not covered by the schedule in K.S.A. 44-510d and amendments thereto. **The extent of permanent partial general disability shall be the extent, expressed as a percentage, to which the employee, in the opinion of the physician, has lost the ability to perform the work tasks that the employee performed in any substantial gainful employment during the fifteen-year period preceding the accident, averaged together with the difference between the average weekly wage the worker was earning at the time of the injury and the average weekly wage the worker is earning after the injury.** In any event, the extent of permanent partial general disability shall not be less than the percentage of functional impairment. Functional impairment means the extent, expressed as a percentage, of the loss of a portion of the total physiological capabilities of the human body as established by competent medical evidence and based on the fourth edition of the American Medical Association Guides to the Evaluation of Permanent Impairment, if the impairment is contained therein. **An employee shall not be entitled to receive permanent partial general disability compensation in excess of the percentage of functional impairment as long as the employee is engaging in any work for wages equal to 90% or more of the average gross weekly wage that the employee was earning at the time of the injury.** (Emphasis added.)

But that statute must be read in light of *Foulk*[1] and *Copeland*.[2] In *Foulk*, the Kansas Court of Appeals held that a worker could not avoid the presumption against work disability as contained in K.S.A. 1988 Supp. 44-510e (the predecessor to the above-quoted statute) by refusing an accommodated job that paid a comparable wage. In *Copeland*, the Kansas Court of Appeals held, for purposes of the wage loss prong of K.S.A. 44-510e (Furse 1993), that a worker's post-injury wage should be based upon the ability to earn wages

[1] *Foulk v. Colonial Terrace*, 20 Kan. App. 2d 277, 887 P.2d 140 (1994), *rev. denied* 257 Kan. 1091 (1995).

[2] *Copeland v. Johnson Group, Inc.*, 24 Kan. App. 2d 306, 944 P.2d 179 (1997).

rather than actual earnings when the worker failed to make a good faith effort to find appropriate employment after recovering from the work-related accident.

> If a finding is made that a good faith effort has not been made, the factfinder *[sic]* will have to determine an appropriate post-injury wage based on all the evidence before it, including expert testimony concerning the capacity to earn wages. . . .[3]

And the Kansas Court of Appeals in *Watson*[4] recently held that the absence of a good faith effort to find appropriate employment does not automatically limit the permanent partial general disability to the functional impairment rating. Instead, the Court reiterated that in such circumstances the post-injury wage for the permanent partial general disability formula should be based upon all the evidence, including expert testimony concerning the worker's ability to earn wages.

Nonetheless, the Judge determined claimant's permanent partial general disability should be limited to her functional impairment rating as the Judge determined claimant's termination was not related to her bilateral wrist injuries. Claimant contends the Judge misinterpreted the law. The Board agrees.

The Kansas appellate courts have consistently held that workers who return to accommodated work following a work injury are not deprived of a work disability if they later lose their job due to an economic layoff. In *Lee*,[5] the Kansas Court of Appeals first held that a worker who, following an injury, returned to work earning a wage comparable to his pre-injury wage was entitled to receive a work disability after losing his job in a layoff. The Court of Appeals, after carefully reviewing the history of the permanent partial general disability formula, stated in *Lee* that it was clear under the present version of the formula that the worker would not be entitled to a work disability as long as he worked for the employer, but once he stopped earning a comparable wage he could receive a work disability, subject to his ability to prove it. In its syllabus, the Court of Appeals stated:

> 1. The 1993 amendments to K.S.A. 1992 Supp. 44-510e(a) are merely the latest in a series of attempts by the legislature to ensure that a worker does not earn substantial post-injury wages while collecting work disability benefits. Thus, the 1992 version of the statute may be interpreted in light of the 1993 amendments.
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> 2. The 1993 version of K.S.A. 44-510e(a) eliminates the presumption of no work disability set out in K.S.A. 1992 Supp. 44-510e(a). Instead, it prevents permanent

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[3] *Id.* at 320.

[4] *Watson v. Johnson Controls, Inc.*, 29 Kan. App. 2d 1078, 36 P.3d 323 (2001).

[5] *Lee v. Boeing Co.*, 21 Kan. App. 2d 365, 899 P.2d 516 (1995).

> partial disability compensation in excess of functional impairment as long as the employee earns 90 percent of his or her pre-injury wage.
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> 3. It is not the intent of the legislature to deprive an employee of work disability benefits after a high-paying employer discharges him or her as part of an economic layoff where the employer was accommodating the injured employee at a higher wage than the employee could earn elsewhere.

A key in understanding why a worker may be entitled to receive a work disability after being laid off due to an economic downturn is found in the history of the permanent partial general disability formula as set forth in *Lee* and *Hughes*.[6]

In January 1998, the Kansas Court of Appeals decided *Gadberry*.[7] In that decision, the Court of Appeals held that a worker who returned to work at her pre-injury wage but within a few weeks was terminated in a layoff was not precluded from receiving a work disability award. Moreover, the Court of Appeals noted that there was no evidence that the employer was accommodating the worker with a light-duty job.[8] The Court stated, in part:

> Gadberry's return to work at the same wage that she had been receiving prior to her [January 21, 1994] injury does not preclude a finding of wage loss since she was given notice of her termination just a few weeks later, and the termination was based on an economic layoff. Pursuant to *Lee*, Gadberry became eligible for compensation on a work disability upon her termination, one component of which is wage loss.[9]

In addressing whether the principles in *Foulk* should preclude claimant from receiving a work disability, the Court stated:

> Gadberry would have continued to work at Polk if she had not been terminated. The record reflects that Gadberry applied for retirement benefits subsequent to her termination because she needed health insurance. Even after she had applied for retirement benefits, Gadberry sought employment with numerous employers within the community. Gadberry did not refuse employment; it was never offered to her.[10]

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[6] *Hughes v. Inland Container Corp.*, 247 Kan. 407, 415-416, 799 P.2d 1011 (1990).

[7] *Gadberry v. R.L. Polk & Co.*, 25 Kan. App. 2d 800, 975 P.2d 807 (1998).

[8] *Id.* at 804.

[9] *Id.* at 805.

[10] *Id.* at 806.

Consequently, in *Gadberry* the Court of Appeals held that the worker was entitled to receive a work disability after she was terminated in an economic layoff despite returning to her regular work without accommodations.

In the 1999 *Niesz*[11] case, the Kansas Court of Appeals held that a worker was entitled to receive a work disability when the worker was later terminated for reasons that were unrelated to the work injury. In that decision, the Court of Appeals held that an accommodated job artificially circumvents a work disability but once that accommodated job ends, the presumption of no work disability may be rebutted.

> Placing an injured worker in an accommodated job artificially avoids work disability by allowing the employee to retain the ability to perform work for a comparable wage. **Once an accommodated job ends, the presumption of no work disability may be rebutted.**[12]
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> **The presumption of no work disability is subject to reevaluation if a worker in an accommodated position subsequently becomes unemployed.**[13]

Consequently, the Court of Appeals held that Ms. Niesz was entitled to receive a work disability after losing her job.

> Niesz performed accommodated work until she lost her job, as did the claimant in *Lee*. **The fact that Niesz' accommodated position ended does not mean that Niesz ceased having work restrictions. Niesz' work disability made it difficult for her to find work in the open market. The presumption of no work disability does not apply because Niesz is no longer earning 90 percent of her preinjury wages.** See K.S.A. 1998 Supp. 44-510e(a). . . .[14]

Finally, in January 2003 the Kansas Court of Appeals in *Cavender*[15] held that a worker who had obtained other employment following a work injury was entitled to receive work disability benefits after resigning her employment for reasons unrelated to the injury. The Court reasoned that the proper test to apply in these situations is whether the worker has made a good faith effort to find appropriate employment. The Court wrote, in part:

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[11] *Niesz v. Bill's Dollar Stores*, 26 Kan. App. 2d 737, 993 P.2d 1246 (1999).

[12] *Id.* at Syl. ¶ 2 (emphasis added).

[13] *Id.* at Syl. ¶ 3 (emphasis added).

[14] *Id.* at 740 (emphasis added).

[15] *Cavender v. PIP Printing, Inc.*, ___ Kan. App. 2d ___, 61 P.3d 101 (2003).

> K.S.A. 44-510e(a) allows work disability in excess of functional impairment only if the claimant is making less than 90% of his or her preinjury gross weekly wage. If this percentage is met, K.S.A. 44-510e(a) provides the equation for computing work disability[.]
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> . . . .
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> The cases interpreting K.S.A. 44-510e have added the requirement that an employee must set forth a good faith effort to secure appropriate employment before work disability will be awarded.
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> The good faith of an employee's efforts to find or retain appropriate employment is determined on a case-by-case basis. . . .[16]
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> . . . .
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> The purpose of the good faith test, at its very core, is to prevent employees from taking advantage of the workers compensation system. **In situations where post-injury workers leave future employment, the good faith test is extended to determine whether leaving was reasonable.** Clearly, in the cases cited by PIP [the employer], leaving employment was reasonable when the employment became outside physical restrictions or the changed circumstances justified a refusal of accommodated employment. **However, the reasonableness of leaving employment is not limited to a decision based on work restrictions or injuries.**
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> The present case is closest in nature, while still not on point, to those cases where an injured employee is terminated due to economic downturn and layoff and the employee is found to still be entitled to work disability. **Those cases present a situation where termination or leaving employment is unrelated to the workers compensation injury or restrictions.** . . .[17]

And the Kansas Court of Appeals has consistently held that factors other than a worker's injury and permanent medical restrictions may be considered in determining whether a worker has made a good faith effort to find employment.[18]

Respondent argues that we should stray from the plain language of K.S.A. 1997 Supp. 44-510e in assessing claimant's permanent partial general disability. The Board disagrees.

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[16] *Id.* at 103-104 (citations omitted).

[17] *Id.* at 105 (citation omitted) (emphasis added).

[18] See *Ford v. Landoll Corp.*, 28 Kan. App. 2d 1, 11 P.3d 59, *rev. denied* 269 Kan. ___ (2000).

> The fundamental rule of statutory construction is that the intent of the legislature governs. When the language used is plain, unambiguous, and appropriate to an obvious purpose, the court should follow the intent as expressed by the words used. When construing a statute, a court should give words in common usage their natural and ordinary meaning.[19]
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> Although appellate courts will not speculate as to the legislative intent of a plain and unambiguous statute, where the construction of a statute on its face is uncertain, the court may examine the historical background of the enactment, the circumstances attending its passage, the purpose to be accomplished, and the effect the statute may have under various suggested interpretations.[20]

Respondent also argues the *Watkins*[21] decision is controlling and, therefore, claimant should be denied a work disability. The Board rejects that argument as *Watkins* involved a different definition of work disability than the one that controls this claim. In *Helmstetter*,[22] the Kansas Court of Appeals specifically held that *Watkins* was not applicable to the present definition of work disability. The Court of Appeals stated:

> Further, *Watkins* involved a different definition of work disability. The former version of K.S.A. 44-510e involved an ability test both as to jobs and wages, and *Watkins* is premised on that ability test.
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> Currently, ability or capacity to earn wages only becomes a factor when a finding is made that a good faith effort to find appropriate employment has not been made. **Once a finding has been made that the claimant has established a good faith effort, the difference in pre- and post-injury wages can be based on the actual wages made.**[23]

In *Watkins*, the Court of Appeals interpreted K.S.A. 1992 Supp. 44-510e, which is the predecessor to the present statute defining permanent partial general disability. In *Watkins*, permanent partial general disability was defined as follows:

> the extent, expressed as a percentage, **to which the ability of the employee to perform work in the open labor market and to earn comparable wages has**

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[19] *Hedrick v. U.S.D. No. 259*, 23 Kan. App. 2d 783, 785, 935 P.2d 1083 (1997) (citations omitted).

[20] *Estate of Soupene v. Lignitz*, 265 Kan. 217, 220, 960 P.2d 205 (1998) (citations omitted).

[21] *Watkins v. Food Barn Stores, Inc.*, 23 Kan. App. 2d 837, 936 P.2d 294 (1997).

[22] *Helmstetter v. Midwest Grain Products, Inc.*, 29 Kan. App. 2d 278, 281, 28 P.3d 398 (2001).

[23] *Id.* at 281 (citations omitted) (emphasis added).

> **been reduced,** taking into consideration the employee's education, training, experience and capacity for rehabilitation, except that in any event the extent of permanent partial general disability shall not be less than [the] percentage of functional impairment. . . . There shall be a presumption that the employee has no work disability if the employee engages in any work for wages comparable to the average gross weekly wage that the employee was earning at the time of the injury.[24]

In direct contrast to measuring a worker's ability to earn a comparable wage and the ability to perform work in the open labor market, claimant's permanent disability is gauged by evaluating the percentage of the actual wage loss and the percentage of actual task loss. Moreover, *Watkins* was premised on the finding that the worker had not lost any ability to earn wages, which is a factor that is only considered under the present disability formula if, and only if, the worker attempts to manipulate his or her claim by failing to make a good faith effort to obtain appropriate employment. In short, the worker's ability to perform the job that the worker was performing at the time of the accident is not determinative of the worker's permanent disability under the present formula.

The Board is aware of the *Newman*[25] decision in which the Kansas Court of Appeals applied *Watkins* to an accident under the present formula for permanent partial general disability. *Newman*, however, does not address the changes in defining permanent disability in the former and present versions of K.S.A. 44-510e. Moreover, *Newman* did not even acknowledge that the Kansas legislature materially changed the definition of permanent partial general disability or acknowledge the holding in *Helmstetter* that *Watkins* did not apply to the present definition of permanent disability. Accordingly, the *Newman* decision does not address the issue now before the Board in this claim.

According to the above appellate court decisions, in determining permanent partial general disability, the question is not whether the worker's injury caused a layoff or termination from employment but whether the worker has made a good faith effort to find and retain appropriate employment. If the worker has made a good faith effort, then the actual difference in pre- and post-injury earnings is used in the permanent partial general disability formula. If the worker has not made a good faith effort, then a post-injury wage should be imputed. Consequently, not all workers who are earning less than 90 percent of their pre-injury wage are entitled to receive an award for work disability.

Moreover, contrary to the Judge's finding that claimant's bilateral wrist injuries are not related to her unemployment, the Board concludes that such injuries have limited her employment opportunities and, therefore, have contributed to her unemployment. First,

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[24] *Watkins*, 23 Kan. App. 2d at 838 (emphasis added).

[25] *Newman v. Kansas Enterprises*, __ Kan. App. 2d __, 42 P.3d 752 (2002).

the bilateral wrist injuries limited the positions that claimant was able to perform in respondent's plant. Accordingly, neither claimant nor her union representative were able to find an open position that would accommodate both her work injuries and her throat condition. Second, claimant is now in the open labor market competing with workers that have neither permanent injuries nor work restrictions. Consequently, claimant's work injuries have limited her opportunities for employment and have made it more difficult for her to obtain employment.

Because claimant has established a good faith effort to find appropriate employment, her actual wage loss should be used for the disability formula. Consequently, as claimant was unemployed when she last testified in this claim, a 100 percent wage loss should be used for the wage loss prong.

Averaging claimant's 100 percent wage loss with the 21 percent task loss yields a permanent partial general disability of approximately 61 percent. Accordingly, the June 24, 2002 Review and Modification of an Award should be modified to grant claimant a 61 percent permanent partial general disability commencing January 31, 2000.

AWARD

WHEREFORE, the Board modifies the June 24, 2002 Review and Modification of an Award and grants claimant a 61 percent permanent partial general disability commencing January 31, 2000.

Sheila Edmond is granted compensation from Raytheon Aircraft Company for a May 26, 1998 accident and resulting disability. Ms. Edmond is entitled to receive .57 weeks of temporary total disability benefits at $351 per week, or $200.07.[26]

For the period ending January 30, 2000, Ms. Edmond is entitled to receive 39.84 weeks of permanent partial general disability benefits at $351 per week, or $14,000,[27] for a 9.6 percent permanent partial general disability.

For the period commencing January 31, 2000, Ms. Edmond is entitled to receive an additional 213.31 weeks of permanent partial general disability benefits at $351 per week, or $74,871.81, for a 61 percent permanent partial general disability, making a total award of $89,071.88.

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[26] See Stipulated Award at 2.

[27] *Id.* at 2.

As of March 20, 2003, there is due and owing to Ms. Edmond .57 weeks of temporary total disability compensation at $351 per week in the sum of $200.07, plus 39.84 weeks of permanent partial general disability compensation in the sum of $14,000, plus 163.57 weeks of permanent partial general disability compensation at $351 per week in the sum of $57,413.07, for a total due and owing of $71,613.14, which is ordered paid in one lump sum less any amounts previously paid. Thereafter, the remaining balance of $17,458.74 shall be paid at $351 per week until paid or until further order of the Director.

The Board adopts the remaining orders set forth in the Review and Modification of an Award that are not inconsistent with the above.

IT IS SO ORDERED.

Dated this ____ day of March 2003.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Roger A. Riedmiller, Attorney for Claimant
David S. Wooding, Attorney for Respondent
Nelsonna Potts Barnes, Administrative Law Judge
Director, Division of Workers Compensation